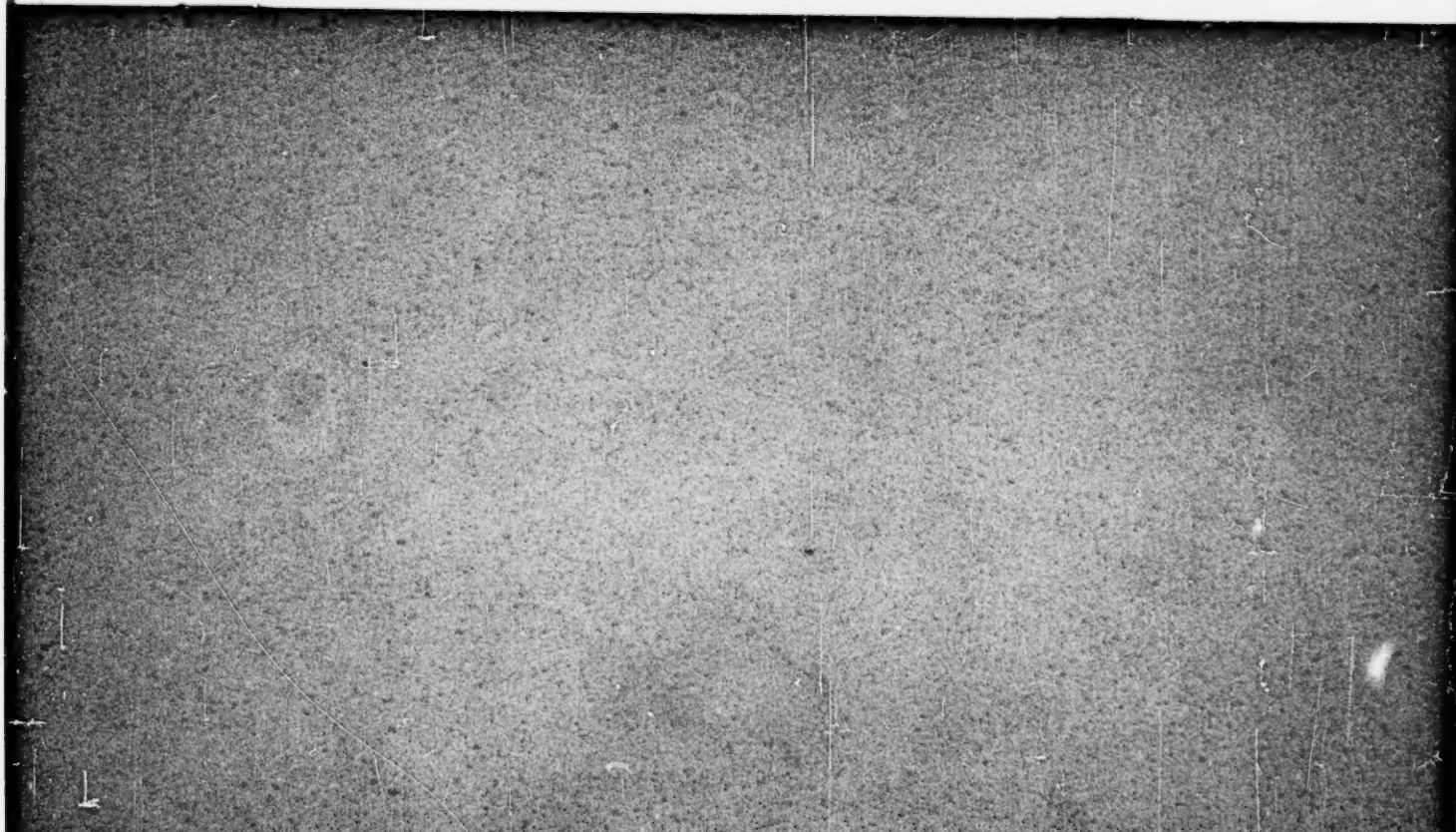

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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974.

No. 74-34

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 336, AFL-CIO,

Petitioner,

vs.

ILLINOIS BELL TELEPHONE COMPANY,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

PETITIONER'S REPLY BRIEF.

GILBERT A. CORNFIELD,
THOMAS W. DUDA,
KLEIMAN, CORNFIELD AND FELDMAN
10 South LaSalle Street,
Suite 452,
Chicago, Illinois 60603,
Attorneys for Petitioner.

Gunthorp-Warren Printing Company, Chicago • 346-1717 56

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I.

THE CASE PRESENTS A SUBSTANTIAL FEDERAL QUESTION OF OVERRIDING IMPORTANCE.

In its Brief In Opposition, the Respondent, Illinois Bell Telephone Company can't seem to make up its mind whether the impact of the present case is inconsequential or of devastating significance. On pages 3-4 the Company apparently contends that the present case is a mere anomaly, a unique vagary with no "far-reaching ramifications" nor any real "dangers". Yet, by the time one finishes perusing the remainder of the document the impression is conveyed that the position taken by the Union in the present litigation could literally emasculate the entire

Bill of Rights provisions of the Landrum-Griffin Act. These positions seem somewhat inconsistent. Further, the Company's first assertion as to the inconsequential nature of the threat their activity poses must be questioned in light of the statement which appears in the "Statement of the Case" portion of their Brief:

> "It is highly probable that at least part of the legal costs of all the cases on union fines which have come to the attention of this Court were paid by interested employers." (Brief In Opposition, page 3).

If this is the case, then the Union's contention is absolutely right that the abuse by employers of rights conferred upon *members* by the Landrum-Griffin Act present a serious threat worthy of Supreme Court review. See Judge Richey's statement in the Right to Work Committee case (Petition for Certiorari, page 7, fn. 4).

Notwithstanding the Company's "smoke-screen" defense that it is engaged in a noble endeavor to stand up for "the little guy" who so deeply feels wronged by his "overbearing union" the reality of the situation is quite different. The Company contends that without its gratuitous assistance to these employees they could provide no adequate defense of their own because of the alleged economic realities of the situation. Yet, despite the fact that the considerations cited by the Company on page 6, paragraph 1 of its Brief are present in numerous other legal contexts which daily confront workers (garnishment, wage assignment, landlord-tenant disputes, etc.) the Company has not initiated a selfless crusade to remedy these wrongs. Rather, the Company has limited its "legal aid" activities to the labor relations context; obviously this quite limited concern is not accidental and it is not altruistic. The Company seeks to weaken its collective bargaining adversary through its efforts to encourage IBEW's members to stimulate litigation; the Company has a definite and very possibly conflicting interest in Union-member litigation. It is this selfish interest which caused the

Company to extend its legal assistance to its workers in this limited context. See *Adamszewski* v. *Machinists, Local 1487*, ... F. 2d ....., 86 LRRM 2592, No. 73-1166 (7th Cir., 1974) for a succinct description of the Company's interest in these cases. It is quite ironic that the Company relies upon the *Boeing* decision to support its economic necessity argument because the holding of that case found the identical reasoning not to be convincing; the argument is even more specious in the present context where the purported guardian of worker's rights is a conniving employer rather than an impartial governmental agency

This Company was not a mere bystander to the events which directly led to the state court suit from which the union is seeking to extricate the Company. Bell's encouragement and participation in the controversy began quite early; it was direct and it led directly to the lawsuit and it was fully intended to do so. While the Company seeks to narrow the Court's focus solely upon the alignment of the parties to the state court suit, such a focus distorts the Company's true role—namely, the primary instigator. Not only did the Company encourage the members to protest the discipline in the first instance before the Local Trial Board but it actually paid on behalf of each employee member the monthly installments on the fines necessary to perfect their appeals to the International Officers and thus exhaust their internal Union remedies. This strategy rather conveniently set the stage for an affirmative lawsuit by the members themselves pursuant to Sections 101(a)(4) and 101(a)(5) of the Landrum-Griffin Act, 29 U. S. C. §§ 411(a)(4) and 411(a)(5), had this strategy been adopted. Had there been such egregious violations of the latter provision in the trials of the various members, as was gratuitously, but without foundation, asserted in the Company's Brief (page 2), then clearly these members could have brought an action under Section 102 of that statute, 29 U. S. C. § 412.

However, that particular strategy was not adopted; rather, the Company cleverly promised the individuals involved that it would pay all the attorneys fees and court costs if only the members would continue in their resistance and "sit it out" thus forcing the Petitioner Union to go after them if it should desire to enforce its discipline and collect the fines. In this context, it is rather silly to maintain that the state court action was purely a conception of the Union (Brief In Opposition, page 5). Further, it is ludicrous to suggest that such, or even the majority of the members, contesting these fines were doing so out of a "deeply felt" belief that they had been wronged. It is quite transparent that the Company's scheme of generating and fostering internal dissension and costly litigation was readily accepted by the strike-breaking employees because the plan provided a simple mode of avoiding or delaying payment of the fines imposed. Since they had nothing to lose (because the Company was footing the whole legal bill) they resisted regardless of the merits of the defenses which were being interposed. The Company, of course, cared little of the ultimate success or failure of the litigation as its goal of injuring the Petitioner was achieved by the litigation itself. The potential damage to the Union is tremendous when one views Bell's action in light of its assertion, quoted earlier herein, that all employers engage in this kind of behavior.

It is crucial to keep in mind at this juncture that it was the Landrum-Griffin Act itself and the "Bill of Rights" freedoms secured to individual members which exposed the Petitioner to the injury presently confronting it. On page 7 of its Brief, the Company asserts, without citation of authority of any kind, that the right of employees to employer financing is long standing and pre-dates the passage of Landrum-Griffin and therefore the Union is attempting to take away from workers pre-existing rights under a statute designed to protect those same workers. While the basic premise is questionable in itself, the conclusion ignores a basic reality. That is, prior to the passage of Landrum-

Griffin in 1959 the rights of a member vis-a-vis his union were limited indeed and the scope of disciplinary authority unions could and did exercise was extremely broad. Thus, employer financing was no real threat at that time; there simply were few, if any, rights to be defended.

It was with the inception of statutory safeguards for intra-union democracy that court challenges to union action became practical. It was Landrum-Griffin itself which made the union vulnerable to the kind of activity which Bell has attempted to get away with. Indeed, on page 4 of its Brief, the Company quite candidly admits that its primary reliance in the state court action rests upon subparagraph 5 of the Bill of Rights provisions of Landrum-Griffin. Congress recognized in passing these Bill of Rights protections that increasing the individual freedoms of union members, concomitantly reduced the institutional solidarity proportionately. While such a consequence was wholly justified for the protection of the worker himself, Congress had no intention of allowing employers to utilize this *new* vulnerability for their own benefit. A review of the debate over the financing provision which is the subject of the instant suit reveals quite clearly the extreme concern which existed over the abuse by employers of the rights conferred upon individual members:

> "Mr. Goldwater: Mr. President, as time is running out, I wish to turn to page 4 of the amendment, and invite the attention of the Senator from California to line 4, page 4:
>
> > That no employer or employer association shall directly or indirectly finance, encourage, or participate in, except as a party, any such action, proceeding, appearance, or petition.
>
> I think that is a good provision. I agree with the Senator from California, which may surprise him.
>
> Mr. Kuchel: No; it does not surprise me. I think the Senator from Arizona is one Member of the Senate who deserves the salute of all of us for the constant attention he has given in this field.

Mr. Goldwater: I thank the Senator.

I ask the Senator from California if he would accept an amendment in the form of an addition; on page 4, at the end of line 6, before the period, to add the following words: 'unless such employer has no dispute, controversy, contract, connection, or relationship of any kind in any area of activity, with the labor organization against which such action or proceeding has been or is being brought by such member.'

Let us say a businessman is a neighbor of a union member, and he is trying to finance him. The businessman has no dispute with his neighbor. He may be in business in another community. If the language proposed were to apply, it would prevent such a laboring man from being financed by his friend, the employer.

I do not think my request is an unreasonable one. I think it would add strength to the provision which has been proposed.

Mr. Clark: Mr. President, will the Senator yield?

Mr. Goldwater: I am happy to yield.

Mr. Clark: It occurs to me that, while I certainly recognize the good motives of the Senator from Arizona, the addition to the proviso might well open up an undesirable loophole. The instance cited by the Senator from Arizona is a legitimate one to raise; but, on the other hand, would it not be possible for an employer or association of employers who just did not like unions generally to finance the activities which they are forbidden to finance or encourage merely because, as a matter of philosophy—

* * * * *

Mr. Kuchel: I say this, Mr. President, that language is not sufficiently clear to the coauthors of the amendment who are in this part of the Chamber at present for me to stand up and say, 'We accept it.'

The sentence we are discussing, which my friend from Arizona would like to amend by adding more words to it, reads:

> No employer or employer association shall directly or indirectly finance, encourage, or participate in, except as a party, any such action, proceeding, appearance, or petition.

That is all that clause states. In other words, it would be an unfair practice, it would be against the law, for an employer or an employer association, directly or indirectly, to spend any money or otherwise to get into that type of situation, unless it were a party. Is that not good public policy?

I do believe we ought not to clutter up that language. It is clear. The provision is an attempt to protect a union member who may be engaged in a dispute with the organization. My colleagues would not want me to accept the amendment.

(105 *Congressional Record* 6724-6725, II Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, 1236-1237.)

When viewed as a whole, the facts as admitted for the purposes of a Motion to Dismiss, indicate that the Respondent Illinois Bell has used the lofty principles embodied in the Landrum-Griffin Bill of Rights to serve its own mundane interests. The record shows a concerted strategy engaged in by Bell to instigate, encourage, foment and finance litigation between the Petitioner and its members; the Company contends that employers throughout the country have followed and continue to follow this strategy extensively. The threat which this wide-spread practice of manipulating worker's rights for employer goals poses is significant; it presents an issue of federal labor policy which demands review by the Supreme Court of the United States.

Respectfully submitted,

GILBERT A. CORNFIELD,
THOMAS W. DUDA,
KLEIMAN, CORNFIELD AND
FELDMAN
10 South LaSalle Street,
Suite 452,
Chicago, Illinois 60603,
Attorneys for Petitioner.